

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL Nos. 108 to 117 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE J.M.PANCHAL****THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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SPL.LAQ OFFICER**Versus****AMARSANG NAROTTAM & ANR**

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Appearance :

MR SS PATEL AGP for Appellant

MR JAY P AMIN for Respondent/s

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL**and****HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

Date : 27/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

[1] **Admitted.** Mr.Jay P. Amin, learned counsel waives service of notice on behalf of the claimants in each appeal.

[2] Mr.S.S.Patel, learned Assistant Government Pleader states at the Bar that the interest of the appellant and that of the respondent No.2 is identical and not in conflict at all. In view of the statement made at the Bar, this Court is of the opinion that it is not necessary for the appellant to effect the service of notice of admission of the appeals upon the respondent No.2. Having regard to the facts of the case, all the above numbered appeals are taken up for final disposal, today.

[3] By filing these appeals under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant has challenged the legality of common judgment and award dated

January 16, 2004 rendered by the learned 10th Joint Civil Judge (S.D.), Vadodara in Land Reference Case Nos.828/1999 to 830/1999, by which the claimants are awarded additional compensation at the rate of Rs.19.25 per Sq.mtr., over-and-above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.4.75 paisa per sq.mt. for their acquired lands.

[4] A proposal was received by the Government to acquire the agricultural lands of Village: Tinglod, District: Vadodara for the public purpose of construction of canals under the Narmada Canals Project. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Tinglod, District: Vadodara were likely to be needed for the said purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on June 30, 1996. The owners of the lands were served with the notices under Section 4 of the Act. They objected to the proposed acquisition. After considering their

objections, the Special Land Acquisition Officer submitted his report under Section 5-A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that agricultural lands of Village: Tinglod, Taluka: Shinor, District: Vadodara which were specified in the Notification published under Section 4(1) of the Act, were needed for the public purpose of construction of canals under Narmada Canals Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on April 4, 1997. The interested persons were, thereafter, served with the notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per Sq.mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated July, 25, 1998 offered compensation to the claimants at the rate of Rs.4.75 per Sq.mtr. for irrigated acquired land

and Rs.3.16 per Sq.mtr. for non-irrigated lands. The claimants were of the opinion that the offer of the compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the cases to the District Court for the purpose of determination of just compensation payable to them. Accordingly, the References were made to the District Court, Vadodara which were registered as Land Reference Case Nos.828/1999 to 830/1999.

[5] On behalf of the claimants, witness Kamleshbhai Prahladbhai Thakor was examined, at Ex.14. He stated in his testimony that the lands acquired were highly fertile and that each claimant was growing crops of cotton, tuver etc. and that each claimant was earning income of Rs.50,000/- to Rs.60,000/- per bigha per year from sale of agriculture produces. It was also claimed by him that lands of Village: Tinglod were, in all respects, similar to the lands acquired from Village: Timbarva which was quite

adjoining and possessed similar advantages. The witness examined on behalf of the claimants, produced previous award of the Reference Court relating to the lands of Village: Timbarva at Ex.15 in support of the claim of the claimants for enhanced compensation. Though the witness was cross-examined on behalf of the Acquiring Authority, nothing substantial was elicited to doubt the assertion made by the witness that the lands of Village: Timbarva were similar, in all respect, to the lands acquired in the instant case.

[6] On behalf of Acquiring Authority, Mr.K.R.Raval, who was Special Land Acquisition Officer was examined at Ex.32. According to him, before acquiring the lands in question, the procedure required to be followed was followed and that the claimants were offered just compensation by the Special Land Acquisition Officer. The witness further stated that Village: Tinglod is 4 kilo meters away from Taluka Town of Shinor and that there was no facility of Higher Secondary School etc. Further, the witness

produced a copy of the Index of sale transaction at Ex.33/1.

[7] On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village: Timbarva was relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said award, the Reference Court by impugned judgment and award has held that the claimants are entitled to get additional compensation at the rate of Rs.19.20 paisa per Sq.mtr. giving rise to the above numbered appeals.

[8] This court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellant and Mr.Jay P. Amin, learned counsel for the claimant/s, at length and in great detail. This Court has also considered the testimonies of the witnesses examined and the documents produced before the Reference Court.

[9] It is relevant to notice that though it

was claimed by the witness examined on behalf of the claimant/s that each claimant was earning income of Rs.50,000/- to Rs.60,000/- per bigha per year, no evidence was adduced to substantiate the said claim nor enhanced amount of compensation was claimed on the yield basis. Similarly, no sale transactions were produced before the Reference Court for its consideration, while deciding the question, whether the claimants were entitled to get enhanced amount of compensation. Though an attempt was made by the Special Land Acquisition Officer to produce a copy of the Index of sale transactions at Ex.33/1, the sale transaction reflected therein, were never produced for consideration of the Reference Court. Under the circumstances, the Reference Court had to consider other evidence adduced on the record for the purpose of determination of the market value of the lands acquired in the instant case. As noticed earlier, it was the case of the claimants that the lands of village: Tiglod were similar, in all respects, to the lands acquired from Village: Timbarva and

had similar advantages. This assertion made by the witness for the claimant/s could not be demonstrated to be untrue. Under the circumstances, this Court is of the opinion that the Reference Court was justified in placing reliance on the previous award of the lands of village: Timbarva for the purpose of determining the market value of the lands acquired in the instant case. It is well settled that the previous award of the Reference Court which has attained finality can be taken into consideration for the purpose of determining the marked value of the lands acquired from adjoining village, if the lands are found in similar and having same advantages. Herein this case, the lands of Village: Timbarva and lands of Village: Tinglod were found to be similar and had similar advantages. Therefore, there is no manner of doubt that the previous award of the Reference Court dated November 5, 1999 rendered by the learned 8th Joint Civil Judge (S.D.), Vadodara in Land Acquisition References Nos.421/1998 to 456/1998 relating to the lands of village:

Timbarva furnished good guidance for the purpose of determination of the market value of the lands acquired from Village: Tinglod. On the basis of previous award produced by the witness for the claimant at Ex.15, the Reference Court has held that the claimants are entitled to get additional compensation at the rate of Rs.19.20 per square meter. However, during the course of hearing of the appeals, the learned Assistant Government Pleader has produced a simple copy of the judgment date March, 16, 2002 rendered by the High Court in First Appeal Nos.1977/2001 to 2009/2001 for perusal of the Court. It makes it very clear that the previous award of the Reference Court rendered in the Land Reference Case Nos.421/198 to 456/1998 on November 5, 1995 was subjected to challenge before the High Court in above numbered appeals and the High Court allowed the appeals partly by judgment dated March 16, 2002 holding that the claimants were entitled to the compensation in all at the rate of Rs.17/- per square meter. As the earlier award of the Reference Court relating to the lands of

Village: Timbarva, which is relied upon by the Reference Court in the instant case, was modified by the High Court in First Appeal Nos.1977/2001 to 2009/2001 by judgment dated March 16, 2002, this Court is of the opinion that the claimants, on the basis of the previous award, would be entitled to receive, in all, compensation at the rate of Rs.18.70 paisa per Sq.mtr. including 10% rise to which the claimants would be entitled to in view of the gap of one year between Notification issued in the instant case under Section 4(1) of the Act and the Notification issued under Section 4(1) of the Act which was published for acquiring lands of Village: Timbarva. Therefore, the appeals will have to be allowed partly.

[10] For the foregoing reasons, all the appeals are partly allowed. The common judgment and award dated January 16, 2006 rendered by the 10th Joint Civil Judge (S.D.), Vadodara in Land Reference Cases Nos.828/1999 to 830/1999 is hereby modified and it is held that the claimants would be entitled to get, in all, Rs.18.70 per

Sq.mtr. for their acquired lands and not at the rate of Rs.24/- per sq.mtr. as held by the Reference Court. The rest of the directions issued by the Reference Court in the impugned judgment and award are hereby upheld. The appeals are allowed to the extent indicated hereinabove. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this judgment.

[J. M. PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

(vijay)